



# California Fair Political Practices Commission

October 11, 1989

Juli C. Scott  
Senior Assistant City Attorney  
P.O. Box 6459  
Burbank, CA 91510

Re: Your Request for Advice  
Our File No. A-89-473

Dear Ms. Scott:

You have requested advice on behalf of Councilmember Thomas Flavin concerning application of the conflict-of-interest provisions of the Political Reform Act (the "Act")<sup>1</sup> to his duties as a member of the Burbank City Council. The following advice is based upon the facts provided in the letters from both you and City Attorney Douglas Holland.

## QUESTIONS

1. The Walt Disney Company pays an annual membership investment to the nonprofit organization which employs Councilmember Flavin. Under the Act, may Councilmember Flavin participate in a decision regarding the City of Burbank's proposed Media District Specific Plan, since it will affect the Walt Disney Company?

2. Under the Act, may Councilmember Flavin participate in a decision regarding discretionary land use entitlements which involve the Walt Disney Company?

## CONCLUSIONS

1. Councilmember Flavin may participate in a decision regarding the City of Burbank's proposed Media District Specific Plan because the Walt Disney Company is not a source of income to him and, based upon the facts provided, there is not a nexus between the purpose for which he receives income and the governmental decision.

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<sup>1</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

2. Councilmember Flavin may participate in a decision regarding discretionary land use entitlements which involve the Walt Disney Company.

#### FACTS

Councilmember Flavin serves as the executive vice president of the Economic Development Corporation ("EDC") of Los Angeles County. The EDC is a private, nonprofit organization which is classified as a Section 503(c)(4) organization for tax purposes. The primary objective of the EDC is to increase local employment and to stimulate the economy by assisting businesses within Los Angeles County to attain financial assistance for the expansion of operations. The EDC is involved in business counseling, promotion, real estate services, and international trade and investment.

The EDC has an annual operating budget of \$1.1 million. Over 50% of its revenues are derived from consultant contracts with various governmental entities including the County of Los Angeles and the State of California. Approximately \$54,000 of the total budget is derived from approximately 100 corporate membership investments. The membership fees, which are not used for general purposes, are limited to supporting the annual international trade mission activities. The EDC organizes trade and investment missions to stimulate foreign investments and trade expansion.

Mr. Flavin's duties as executive vice president are to carry out the day-to-day activities of the board of directors, except for the trade mission activities. He does not engage in direct negotiations with any parties on behalf of the EDC, but serves in a coordinating function relative to the entire scope of the EDC's activities, with the exception of the trade mission activities.

The City of Burbank is considering the adoption of a "Media District Specific Plan" as an element of the city's general plan. The purpose of the media district is to recognize and accommodate the unique land use needs of the entertainment-related industries within the city.

As part of the specific planning process, the City of Burbank will be considering various land use and property development standards that will affect the ability of all the property owners within the media district specific planning area to develop their respective properties. The Walt Disney Company owns one of the parcels within the specific planning area.

It is anticipated that the Walt Disney Company will apply for various discretionary development entitlements, including zone map amendments, conditional use permits, and planned developments in order to accommodate the long-range development plans of the Walt Disney Company.

The Walt Disney Company contributes \$1,000 a year as a membership investment to the EDC, which is used for trade mission activities.

#### ANALYSIS

The Act prohibits a public official from making, participating in, or using his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. (Section 87100.) A public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his immediate family or on, among other things:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

#### Section 87103(a)-(d).

You have asked if Councilmember Flavin may participate in city council decisions which may affect a member of the EDC, specifically, the Walt Disney Company. The resolution of this question depends on whether the member is a source of income to Councilman Flavin. In previous situations, we have advised that a member of a nonprofit association is not a source of income to an employee of the association. (Best Advice Letter, No. A-81-032, copy enclosed.)

This advice is also applicable to the facts of the present situation in which Councilmember Flavin is the executive vice president of the nonprofit association of which the Walt Disney Company is a member. Therefore, Disney's membership in the EDC is not considered a source of income to Councilmember Flavin. Accordingly, Councilmember Flavin is not required to disqualify

himself from participating in the media district or land use entitlement decisions affecting the Walt Disney Company.

However, the EDC pays Mr. Flavin a salary of more than \$250 a year and is a source of income to him. If there is a "nexus" between the purpose for which Mr. Flavin receives income and a governmental decision, Mr. Flavin may not participate in the decision. (Regulation 18702.1(d).) For example, if, as part of its real estate services, the EDC were involved in the development of the proposed media district, Mr. Flavin could not participate in the decision whether to adopt the Media District Specific Plan. You have stated in your letter of September 20, 1989 that there is not a nexus between Mr. Flavin's source of income, the EDC, and the specific governmental decisions discussed in this letter. Based upon Mr. Flavin's job duties, we agree. Accordingly, Mr. Flavin may participate in those decisions.

I trust that this answers your question. If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan  
General Counsel

By: Jill R. Stecher  
Counsel, Legal Division

KED:JRS:plh

Enclosure



FPPC  
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OFFICE OF THE CITY ATTORNEY  
275 E. OLIVE AVE. • P.O. BOX 6459 • BURBANK, CALIFORNIA 91510  
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August, 8, 1989

Kathryn Donovan  
Fair Political Practices Commission  
P. O. Box 807  
Sacramento, CA 95814

Subject: Request For Formal Written Advice (Councilmember  
Flavin)  
Our File: 201-1

Dear Ms. Donovan:

Thomas Flavin, a member of the Burbank City Council, is requesting formal written advice pursuant to Government Code Section 83114(b) and Section 18329 of the Regulations of the Fair Political Practices Commission. I am the City Attorney for the City of Burbank and have been authorized by Mr. Flavin to make this request relating to Mr. Flavin's duties under the Fair Political Practices Act.

The facts of the situation are as follows:

1. Councilmember Flavin, serves as the executive vice president of the Economic Development Corporation (EDC) of Los Angeles County. EDC is a private, nonprofit organization and is classified as a Section 503(c)(4) organization for tax purposes. The primary objective of EDC, according to its Financial Statement, is to increase local employment and stimulate the economy by assisting businesses within Los Angeles County to attain financial assistance for the expansion of operations. EDC is engaged in the following specific activities:
  - A. Business Counseling. EDC assists existing businesses with sales and marketing, management, accounting, financial analysis, computer implementation, and business planning.

- B. Financing Assistance. EDC assists business in locating the best possible lending terms in order to aid businesses who are planning capital projects that will result in the creating or retention of permanent jobs.
  - C. Business Promotion and Retention. EDC assists in marketing Los Angeles County businesses and industries throughout the United States and overseas through newsletters, brochures, and advertising.
  - D. Legislative Advocacy. EDC supports changes in the law which improve the climate for business operations.
  - E. Real Estate Services. EDC provides information to companies seeking to establish new or expanded operations and to assist in the development of private of public properties.
  - F. International Trade and Investment. EDC attempts to develop and expand activities that will increase visibility in a positive image with overseas businesses, and to assist foreign companies wishing to locate in Los Angeles County.
2. EDC has a total operating budget of 1.1 million dollars per year. Over 50% of EDC's revenues are derived from various consultant contracts with various governmental entities including the County of Los Angeles and the State of California. Approximately \$54,000 of its total budget is derived from "membership investments" from approximately 100 corporate members from throughout Los Angeles County. Membership fees are not used for general purposes and are in fact limited to supporting the annual trade mission activities of the EDC. These trade missions relate to the International Trade and Investment category described above. The EDC organizes and participates in international trade and investment missions to stimulate foreign, economic, and financial interests, direct investments, joint ventures, licensing agreements, and trade expansion.
  3. For fiscal year 1988, the revenue from membership investments equaled \$53,615. Trade mission expenses for 1988 were \$54,777.
  4. Mr. Flavin has not been involved nor has participated in any of the trade mission activities of EDC; nor does he anticipate being involved or participating in any such activities during his term on the City Council.
  5. The Walt Disney Company, a corporation headquartered in the City of Burbank, contributes \$1,000 a year as a membership investment to EDC.

6. The City of Burbank is currently in the process of preparing a specific plan for a portion of the City commonly referred to as the Media District Specific Planning Area. One of the parcels within the planning area is owned by Walt Disney studios and this parcel is used as a motion picture and television studio facility and the corporate offices of the Walt Disney Company.
7. As part of the specific planning process, the City of Burbank will be considering various land use and property development standards that will affect the ability of all of the property owners within the Media District specific planning area, including the Walt Disney Company, to develop their respective properties.
8. It is also anticipated that the Walt Disney Company will make application for various discretionary development entitlements, including zone map amendments, conditional use permits, and planned developments in order to accommodate long-range development plans of the Walt Disney Company.

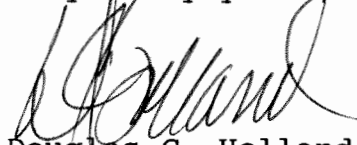
In light of the above facts, I would request that you answer the following questions:

1. May Councilmember Flavin participate and vote on the proposed Specific Plan for the Media District specific planning area, including the various land use restrictions and development standard regulations that may affect the Walt Disney Company, as well as all other property owners within the specific planning area?

2. May Councilmember Flavin participate and vote on any discretionary entitlement involving the Walt Disney Company that may come before the City Council?

If you have any questions, or if you require additional information regarding this request, please do not hesitate to call this Office. Your immediate attention to this matter will be greatly appreciated.

Very truly yours,



Douglas C. Holland  
City Attorney

DCH/keb  
FPPC.DHL



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September 20, 1989

Jill Stecher  
Fair Political Practices Commission  
P.O. Box 807  
Sacramento, California 95814

Re: Supplemental Information Regarding Request for  
Formal Written Advice (Councilmember Flavin)  
Our File No.: 201-1

Dear Ms. Stecher:

The purpose of this letter is to provide the additional information you requested relative to our office's request on behalf of Councilmember Tom Flavin for formal written advice.

In our August 8, 1989 letter, we outlined for you certain facts relative to Mr. Flavin's employment by EDC, a private nonprofit organization in Los Angeles County. We specifically requested advice on whether or not Mr. Flavin's employment by EDC would restrict his participation in the decision making process for the City of Burbank's proposed Media District Specific Plan. We also asked for advice as to whether or not his employment would restrict his participation in the decision-making processes associated with the application for any discretionary land use entitlements by the Walt Disney Company.

You requested more specific information on Mr. Flavin's job duties and a discussion of the FPPC Regulations No. 18702.1(a)(1) "nexus" test for materiality. I am hoping the following will adequately respond to your concerns.

o Additional facts regarding Mr. Flavin's employment-related duties

Councilmember Flavin serves as the Executive Vice President of the Economic Development Corporation (EDC) of Los Angeles County. In our letter of August 8, 1989, we outlined with considerable specificity, the types of business activities in which EDC is engaged. As the Executive Vice President, Councilmember Flavin's duties are primarily to carry out the day-to-day activities of the Board of Directors with the exception of any trade mission activities. (You will recall, that the only participation by the Walt Disney Company in EDC is as a \$1,000 a year member of the trade mission.) Mr. Flavin does not engage in direct negotiations with any parties on behalf of EDC, but rather serves in a coordinating function relative to the entire scope of EDC's activities, again, with the exception of the trade mission activities.



Jill Stecher  
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- o Is there a nexus between purpose for which Flavin receives income and governmental decision?

You asked that I specifically address the nexus requirements set forth in FPPC Regs. No. 18702.1(a)(1) and 18702.1(d). Reg. 18702.1(a)(1) finds the effect of a decision to be "material" if there is a nexus between the purpose for which the official receives the income and a particular governmental decision. Reg. No. 18702.1(d) defines "nexus" as existing if the official receives an income to achieve the goal or purpose which would be achieved, defeated, aided or hindered by the governmental decision.

Based upon all of the facts presented in the August 8, 1989 letter and herein, there is clearly no nexus between the purpose for which Councilmember Flavin receives his income and the governmental decisions which have been specifically focused on in the request for formal written advice.

The governmental decisions about which advice has been requested are the following:

- A. The City of Burbank is considering the adoption of a "Media District Specific Plan" as an element of the City's general plan. The general plan and its associated specific elements provide standards and guidance for the development and utilization of property within the City. The standards apply to all property owners. The specific purpose of the Media District Specific Plan is to recognize and accommodate the unique land use needs of the entertainment-related industries within the City of Burbank (of which Walt Disney is one of several); and to integrate and coordinate these needs with the associated needs and opportunities of the surrounding, primarily residential, areas. It is purely a land use and planning process.

According to our August 8, 1989 letter, the Walt Disney Company contributes \$1,000 a year to the \$54,000 a year trade mission budget. The trade mission budget represents approximately 5% of the entire \$1.1 million operating budget of EDC. The purpose of the trade mission aspect of EDC is to attempt to develop and expand activities relative to overseas businesses and to assist foreign companies wishing to locate in Los Angeles County. The entire purpose of the trade mission element of EDC has no relationship whatsoever to the land use and

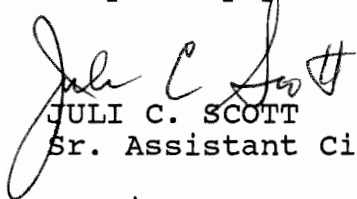
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planning processes of the City of Burbank being pursued with the proposed Media District Specific Plan. Even if Councilmember Flavin were involved in the trade mission, there would clearly be no connection or nexus between the income he receives through his EDC salary and the purpose to be achieved, defeated, aided or hindered by his vote on the Media District Specific Plan.

- B. The second part of the requested advice relates to Mr. Flavin's participation and voting on specific discretionary entitlements involving Walt Disney Company which may come before the City Council. Again, the traditional discretionary entitlements which the City Council is required to vote on involve land use and planning decisions. Again, as with the information set forth above, there is no connection between the goals of the trade mission element of EDC (and Walt Disney's participation therein) and any decision rendered by the City Council relative to land use and planning.

I am hopeful that this information adequately responds to your concerns per our discussion. If you need any further information or have any other questions, please do not hesitate to call this office. Thank you for your earliest attention to this matter.

Very truly yours,



JULI C. SCOTT

Sr. Assistant City Attorney

JCS:jm  
JSPSTECHEER

cc: Tom Flavin



# California Fair Political Practices Commission

August 21, 1989

Douglas C. Holland  
City Attorney  
P.O. Box 6459  
Burbank, CA 91510

Re: Letter No. 89-473

Dear Mr. Holland:

Your letter requesting advice under the Political Reform Act was received on August 14, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Jill Stecher an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Kathryn E. Donovan  
General Counsel

KED:plh